HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION NO.16977 OF 2006

BETWEEN

Mallesh

.....

Petitioner

And

The State of Andhra Pradesh
Rep. by the Secretary,
Municipal Administration and Urban Development,
Hyderabad & others

.....Respondents

::O R D E R ::

Counsel for the Petitioner : Shri Syed Shareef Ahmed

Counsel for Respondent No.2 : Shri P. Radha Krishna

Dated: 25.08.2006

Per G.S. SINGHVI, CJ

This is a petition for quashing notice dated 09.08.2006 issued by Commissioner, Kukatpalli Municipality (for short 'the Commissioner') requiring the petitioner to remove unauthorized structure constructed in the complex known as Alluri Complex.

In the affidavit filed by him, Shri Mallesh, Proprietor, M/s New Loyal Hair Style has averred that Bhagyanagar Co-op. Housing Society (for short 'the society') purchased lands and divided the same into plots. The society registered plot in favour of five persons, namely, R. Narayanarao, A. Vijayakumar Raju, K.A. Somaraju, V. Eswara Raju and T.S. Sastry. All the vendees along with A.S. Raju constituted a partnership firm on 21.01.1984 for construction of godowns, commercial shops on the ground floor and commercial/residential flats in four floors after setting apart an extent of 4600 square feet for parking in the cellar. During the life-time of Shri A.S Raju (he died on 08.06.1999), a new partnership firm was constituted under the name and style "M/s Alluri Associates" of which Shri A. Vijaya Kumar Raju was appointed as Managing Partner. The petitioner has further averred that the construction was raised without any deviation and at no point of time any application was made seeking regularization in the Stilt Floor. He has further averred that the impugned notice for removing the alleged illegal construction has been issued by the Commissioner without giving him notice and opportunity of hearing and, therefore, the same is liable to be nullified.

We have heard learned counsel for the parties and perused the record. In the affidavit filed by him, the petitioner has made reference to a number of documents including the sanctioned plan and has averred that the construction made by the partnership firm constituted under the name and style of M/s Alluri Associates is not in violation of the sanctioned plan.

At the hearing, we asked the learned counsel to show the sanctioned building plan and other documents to which reference has been made in the affidavit of the petitioner, but he failed to invite our attention to any such document.

In our opinion, the petitioner's failure to produce basic documents, which constitute the foundation of his claim that no unauthorized construction has been raised by Shri A. Vijaya Kumar Raju or M/s Alluri Associates, disentitles him from seeking relief under Article 226 of the Constitution of India. However, keeping in view the fact that the impugned notice was issued without complying with the rules of natural justice, we feel that ends of justice would be met by giving liberty to the petitioner to appear before the Commissioner and produce all the documents to show that he has not made any unauthorized construction with a further direction to the Commissioner to decide the same within a specified timeframe.

Hence, the writ petition is disposed of with the following directions:

1) Within seven days from today, the petitioner shall appear

before the Commissioner and produce all documents to show that he has not raised any construction in violation of the sanctioned plan. He shall also be free to raise all legally permissible objections against notice dated 09.08.2006.

2) Within next two weeks, the Commissioner shall consider the objections and documents produced by the petitioner, hear him and pass appropriate order.

3) If the Commissioner comes to the conclusion that the petitioner has made unauthorized construction or any deviation has been made from the sanctioned plan, then he may order demolition of such illegal or unauthorized construction. However, such order shall not be given effect for a period of seven days within which the petitioner shall be free to avail appropriate legal remedy including the one by way of filing fresh petition.

Since the notice impugned in the writ petition was issued in furtherance of the direction given by the Division Bench, we direct that in future, the writ petitions filed in the matter of removal of unauthorized structure or illegal construction shall be listed before the Division Bench as per roster.

We also deem it proper to observe that before issuing notice for demolition, the concerned authorities of the municipality should comply with the rules of natural justice. This would go a long way to obviate unnecessary litigation.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

25.08.2006

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